

UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA,

v.

DYLAN C. BURKETT,

Case No. 6:23-po-00241-HBK

ORDER DENYING WITHOUT PREJUDICE  
GOVERNMENT'S MOTION TO DISMISS

(Doc. No. 4)

Pending before the Court is the Government's Motion to Dismiss filed on September 8, 2023. (Doc. No. 4). The Government's motion consists of a single sentence: "The United States of America, by and through Phillips A. Talbert, United States Attorney, and Jeffrey A. Spivak, Assistant United States Attorney, pursuant to Rule 48 (a) of the Federal Rules of Criminal Procedure, moves to dismiss this case in interest of justice without prejudice." (*Id.*).

On June 2, 2023, Defendant was charged with two bailable violation notices (E1167114 and E1167113): (1) possession of alcoholic beverage by person under 21 years of age in violation of 36 C.F.R. §2.35(a)(2)(ii); and (2) carrying or storing an open container of alcohol in violation of 36 C.F.R. §4.14(b). (Doc. Nos. 1, 3). Defendant failed to pay the collateral fines and his Initial Appearance is scheduled for September 12, 2023 at 1:00 P.M. (Doc. No. 2).

A "court's discretion to deny leave [under Rule 48] is limited" and is only permitted where "the motion was clearly contrary to manifest public interest." *United States v Gonzalez*, 58 F.3d 459, 461-462 (9th Cir. 1995); *United States v. Garcia-Valenzuela*, 232 F.3d 1003, 1008 (9th Cir.

2000) (finding the district court had abused their discretion in denying a Rule 48 because there was “no evidence ... that the government's motion was contrary to public interest.”). Nonetheless, “[t]he prosecution has the responsibility of bringing to the court’s attention the grounds for dismissal.” *Fed. R. Crim. Proc. Handbook* p. 790 (2023). Indeed, “Rule 48(a) operates like a sunshine provision” and “contemplates public exposure by the government of its reasons for dismissing a case to prevent prosecutors from abusing their powers.” *Id.*, p. 791-92. The Court will therefore deny the government’s motion without prejudice to refileing their motion to include the ground(s) for dismissal.

Accordingly, it is hereby **ORDERED**:

1. The Government’s Motion to Dismiss (Doc. No. 4) is DENIED without prejudice.

2. The Court CONTINUES Defendant’s Initial Appearance to **Tuesday, October 17, 2023 at 1:00 P.M.** in Yosemite.

Dated: September 11, 2023

  
HELENA M. BARCH-KUCHTA  
UNITED STATES MAGISTRATE JUDGE